

Oversight Division

Committee On Legislative Research

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PROGRAM EVALUATION

Review of the Department of Labor and Industrial
Relations
Second Injury Fund

Program Evaluation

Review of the Department of Labor and Industrial Relations Second Injury Fund

*Prepared for the Committee on Legislative Research
by the Oversight Division*

Mickey Wilson, CPA, Director

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TABLE OF CONTENTS

| | |
|---|--------|
| COMMITTEE ON LEGISLATIVE RESEARCH | ii |
| LETTER OF TRANSMITTAL | iii |
| EXECUTIVE SUMMARY | iv |
| INTRODUCTION | page 1 |
| BACKGROUND | page X |
| OBJECTIVES | page X |
| SCOPE / METHODOLOGY | page X |

Committee on Legislative Research Oversight Subcommittee

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The programs and activities of the State of Missouri cost approximately \$21.6 billion annually. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

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Committee on Legislative Research
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Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution in May 2007, directing the Oversight Division to perform a program evaluation of the Department of Labor and Industrial Relations Second Injury Fund to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation.

The report includes Oversight's comments on internal controls, compliance with legal requirements, management practices, program performance and related areas. We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may request a copy of the report from the Oversight Division by calling 751-4143.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott Muschany", written over a horizontal line.

Representative Scott Muschany
Chairman

EXECUTIVE SUMMARY

The Missouri Second Injury Fund was created in 1943 as a part of the Workers' Compensation program to help disabled workers find employment. The creation of the fund allowed employers to hire a worker with a previous disability by limiting the employer's liability to the extent of the disability caused by the last injury (the second injury) alone. When an employee with a previous disability is injured and the current work related disability combines with a previous disability to create a greater overall disability, the Second Injury Fund is used to compensate the injured employee for the balance of the overall disability.

Expenditures from the Second Injury Fund have increased from \$18.5 million in calendar year 1994 to \$63.9 million in calendar year 2006. In addition, expenditures have been greater than revenues since 2006 and are projected to exceed revenues through 2012. Analyses by the Department of Labor and Industrial Relations, Division of Workers' Compensation, the Office of the State Auditor, and from a consulting actuarial firm engaged by the state have projected that the fund will become insolvent in the near future.

Since virtually all expenditures from the fund are for claims, Oversight reviewed the primary factors in increased claims expenditures, and found both a higher number of claims resolved each year and higher costs per claim due to increasing medical costs. Legislation passed in 2005 included restrictions on the nature of injuries that could be reported in the Workers' Compensation program, and provided additional defenses to employers and insurers. The legislation is expected to reduce the growth in claim costs, and the number of new cases filed fell from 2005 to 2006. However, expenditures have continued to increase as cases filed in previous years are resolved.

The Office of the State Treasurer and the Office of the Attorney General make lump sum settlement offers to certain claimants, in which a settlement is offered to the claimant in exchange for a fraction of the future benefits the claimant would ordinarily receive. The settlement benefits the claimant as well as the fund since the receipt of monthly benefit payments would reduce the claimant's Social Security benefits. We recommended that guidelines for evaluating claims and offering these payments be formalized and documented.

Oversight has concluded that significant expenditure reductions would require changes in the law governing the program, and has recommended the Department of Labor and Industrial Relations, Division of Workers' Compensation, and the Office of the Attorney General review potential law changes with the General Assembly. The agencies discussed some of these potential law changes with Oversight, including restrictions on previous disabling conditions and an independent medical review requirement.

Oversight also reviewed the information management processes used by the agencies, and determined that an enhanced information system would allow improved management of the Second Injury Fund program. An improved system is being developed, and we recommended the Department of Labor and Industrial Relations, Division of Workers' Compensation, the Office of the Attorney General, and the Office of the State Treasurer work together to manage the development of the new system.

Oversight wishes to thank the Department of Labor and Industrial Relations, Division of Workers' Compensation, and the Office of the Attorney General, for their cooperation and assistance during the evaluation.

A handwritten signature in cursive script that reads "Mickey Wilson".

Mickey Wilson, CPA
Director

Chapter 1 - Introduction

Purpose

The General Assembly has provided by law that the Committee on Legislative Research may have access to and obtain information concerning the needs, organization, functioning, efficiency and financial status of any department of state government or of any institution that is supported in whole or in part by revenues of the state of Missouri. The General Assembly has further provided by law for the organization of an Oversight Division of the Committee on Legislative Research and, upon adoption of a resolution by the General Assembly or by the Committee on Legislative Research, for the Oversight Division to make investigations into legislative and governmental institutions of this state to aid the General Assembly.

The Committee on Legislative Research directed the Oversight Division to perform a program evaluation of the Second Injury Fund for the purpose of providing information to the General Assembly regarding proposed legislation and appropriation bills.

Objectives

The objectives of the Oversight Division's evaluation of the Second Injury Fund included reviewing:

- * The existence and adequacy of guidelines for claim processing.
- * Staffing and efficiencies of the state agencies involved with the Second Injury Fund caseload.
- * Existence and adequacy of eligibility guidelines for rehabilitation services.
- * Adequacy of service verification before payment.
- * Variations between fiscal note projections and actual Second Injury Fund Costs.

Scope

The scope of our evaluation included the time period from July 1, 1997 to June 30, 2007. Our scope was not limited to specific fiscal years, although for most analyses, data from fiscal years 2002 through 2007 was utilized.

Methodology

Our evaluation included interviewing personnel from the Department of Labor and Industrial Relations, the Office of the Attorney General, and the Office of the State Treasurer; reviewing statutes, rules and regulations; examining financial records; testing samples of transactions, and surveying other states' programs.

Background

The Missouri General Assembly first approved a workers' compensation law in 1919, although final voter approval was not completed until 1926. The Department of Labor and Industrial Relations - Division of Workers' Compensation (DWC) administers programs to ensure injured employees receive prompt and adequate medical treatment, and payment of wages lost due to injuries. DWC personnel also ensure workers receive appropriate compensation for permanent disability and physical rehabilitation by processing claims and conducting hearings to resolve disputes between employers and employees relating to workers' compensation benefits. DWC operations are funded by a tax on employers' net workers' compensation insurance premiums and on calculated equivalent premiums for self-insured employers.

The General Assembly amended the Missouri workers' compensation laws to create the Second Injury Fund (SIF) in 1943 to help disabled workers find employment. The SIF compensates injured employees when a current work related disability combines with a previous disability to create a greater overall disability. The law limits the employer's liability to the extent of the disability caused by the last injury alone (the second injury). The creation of the SIF allowed employers to hire a worker with a previous disability by limiting the employer's liability for the previous disability. The SIF is funded through a surcharge assessed on workers' compensation insurance premiums.

The SIF was originally intended to assist disabled veterans in obtaining employment, limit the liability of employers to the work related injury incurred in the workplace, and cover permanent total disability. Benefits available from the Second Injury Fund have been extended several times by the General Assembly.

Benefits for physical rehabilitation. (1951)
Payment for permanent partial disability. (1955)
Payments for medical bills when the employer is uninsured. (1980)
Payment for death benefits to a worker's dependents when the employer is uninsured. (1982)
Payment for temporary total disability benefits for wages from a second job when the worker is insured on another job. (1993; this provision sunseted in 1996 and was reestablished in 1998)

The State Treasurer is the official representative and custodian for the SIF, and the Attorney General provides legal services in all claims made for recovery against the Fund. The DWC is responsible for setting and collecting the Second Injury Fund Surcharge, processing claims, and paying all benefits associated with the SIF.

Chapter 2 - Comments

Comment 1:

Second Injury Fund Expenditures

Expenditures from the Second Injury Fund (SIF) increased by more than 340 percent, from \$18.5 million in calendar year 1994 to \$63.9 million in calendar year 2006. The largest single-year increase was \$12 million from 2001 to 2002, and expenditures have continued to increase each year. Expenditures have been greater than revenues since 2006 and are currently projected to exceed revenues through 2012.

Virtually all expenditures from the fund are for claims. Oversight has examined claims records and reviewed SIF claims activity with the Department of Labor and Industrial Relations, Division of Workers' Compensation (DWC) and with the Office of the Attorney General (AGO). Oversight has observed that the number of cases processed as well as the cost per case increased significantly from 1994 to 2006.

A. Increase in Claims Filed

We noted that more claims have been filed over the past few years. The number of claims filed increased from 9,740 in 1997 to 14,199 in 2002, and then fell to 10,591 for 2006.

Legislation passed in 2005 included restrictions on the definition of injuries that would be compensable and provided additional defenses to employers and insurers. Oversight expects that the impact of that legislation should result in a reduction in claims filed for SIF benefits, although it would be difficult to define the specific impact of the legislation.

B. Increase in Cases Dismissed

Cases are dismissed when the DWC or the AGO conclude that the claimant is not eligible for benefits from the Second Injury Fund. The number of cases dismissed increased from 7,147 in 1997 to 8,824 in 2006.

C. Increase in Cases Resolved

Cases resolved increased from 3,431 in 1997 to 5,642 in 2004 and have been relatively constant since then. Since payments are only made to claimants after a resolution, the increased number of cases resolved would likely contribute to an increase in annual expenditures. We understand that during these years the AGO has improved their procedures for resolving cases, and agreed with the Office of the State Treasurer on a process to resolve more cases by offering larger lump sum payments.

D. Increase in Disability Case Costs

The largest category of Second Injury Fund claim costs is for permanent disability cases. As discussed more fully in a separate comment, DWC records did not accurately identify partial and total permanent disability cases; therefore, DWC cannot separately report the results of those cases. Accordingly, Oversight has analyzed only the combined results of these cases. The average reported cost per case increased from \$4,765 in 1995 to \$9,644 in 2002 and \$11,820 in 2006.

The amount of expenditures on cases with settlements involving multiple payments increased from \$29 million in 2002 to \$38 million in 2006. Oversight noted that the largest single component of the increased expenditures from the SIF were for cases with multiple payments for disabilities. A case might have multiple payments for a number of reasons including income replacement and medical costs. These costs are largely out of the control of the Division of Workers' Compensation and the Office of the Attorney General. As noted in Schedule 5, medical costs have increased much more rapidly than other costs paid from the program.

E. Additional Program Benefits

As discussed in the Background section, a number of additional benefits have been provided since the inception of the program. Our analysis of program expenditures indicates that these benefits are not major expenditure factors; however, every added benefit category would increase expenditures after the effective date of the provisions.

Oversight has concluded that significant expenditure reductions would require changes in the law governing the program, and Oversight recommends that the Department of Labor and Industrial Relations, Division of Workers' Compensation and the Office of the Attorney General review potential legislative changes with the General Assembly.

Comment 2:

Lump Sum Payments

Lump sum settlements are offered to claimants in place of long-term payments from the Second Injury Fund (SIF) when the total amount due a claimant is comparatively large. These payments increase the amount of current recorded expenditures but reduce future expenditures. In many instances, a lump sum payment may actually benefit the Second Injury Fund and the claimant, as discussed below. Oversight reviewed the lump sum payment program with officials from the Division of Workers' Compensation (DWC), the Office of the Attorney General (AGO), and the Office of the State Treasurer (STO), and we tested a sample of claim files supporting those payments.

A. Number and Amount of Settlement Payments Has Increased

In 2001, the AGO and the STO raised the maximum lump sum settlement amount from \$40,000 to \$60,000. The total amount of lump sum settlements was \$25 million in 2006. The AGO has kept a log of settlements since 2001; the number of settlement amounts lower than the old limit of \$40,000 increased from 138 in 2001 to 166 in 2007 while the number of settlement amounts between \$40,000 and \$60,000 increased from 234 in 2001 to 400 in 2007. The increased limit appears to have allowed for a significant increase in cases settled for a lump sum instead of monthly benefit payments.

For claimants who received a settlement between \$40,000 and \$60,000, the average age of claimants at the time they received a settlement was 54; the average amount of SIF benefits already due and owed to these claimants at the time of the settlement was \$38,276; and the average estimated lifetime benefits for these claimants was \$480,604. It would appear the previous lump sum limit of \$40,000 was not adequate since the maximum amount that could be offered was only slightly greater than the amounts already due to claimants for accumulated unpaid benefits.

We believe that the SIF might benefit if even larger lump sum payments could be offered to claimants with large amounts of future benefits, and that the Lump Sum Payment Program should be reviewed by the Office of the State Treasurer, the Office of the Attorney General, and the Division of Workers' Compensation, and appropriate parameters should be determined for lump sum settlement payments.

B. Settlement Payments Are Made to Social Security Recipients

Many claimants are eligible for Social Security Administration (SSA) benefits in addition to SIF payments because of their combination of age and disabling conditions. SSA procedures require that SSA benefits be reduced, or offset, if total benefits received from workers' compensation or other public disability benefits, plus SSA disability benefits for all family members, exceed 80 percent of the worker's average current earnings. The SSA benefit would be reduced until the month the worker reaches age 65 or the month the other benefits stop, whichever comes first.

This SSA offset affects the claimant's assessment of monthly SIF benefits. If a claimant's monthly benefits would reduce their SSA benefits and a lump sum payment could be structured to avoid any reduction of those benefits, that claimant would have a significant incentive to settle for a lump sum payment. A federal court decision (*Sciarrotta v. Bowen*) upheld specific language to create a settlement which would not cause a reduction in Social Security benefits. The SSA accepted the proposition that it is bound by the terms of state workers' compensation program settlement agreements if the language is similar to that used in the *Sciarrotta* case.

We were informed that one of the primary considerations in the *Sciarrotta* decision was that the lump sum payment is offered in place of the claimant's lifetime benefit eligibility. Oversight believes that Missouri SIF lump sum settlements are properly structured to meet the *Sciarrotta* case specifications. We noted that the AGO consistently estimated the standard life expectancy for the claimant's age, sex, and race regardless of conditions (such as illnesses or behaviors) which might affect their life expectancy. In addition, benefits were calculated as if claimants intended to work until their death rather than their normal retirement age.

C. Second Injury Fund Agency Agreement

Officials from the DWC told us they were not involved in the decision to increase the maximum payment amount, and Oversight was not able to obtain documentation of the agreement between the AGO and the STO. In addition, we were not able to obtain information regarding the methodology used to determine when a lump sum payment would be preferable to the payment of monthly benefits. We did not formally evaluate the value of future Second Injury Fund payments against lump sum settlements made to individual claimants, since the amount of benefits due at the time of settlement was so large in comparison to the amount paid.

Oversight recommends the Division of Workers' Compensation meet with the Office of the Attorney General and the Office of the State Treasurer to establish appropriate guidelines for lump sum settlements and ensure that the program is operated within those guidelines. The meetings and guidelines should be properly documented, and the guidelines should be in written form.

Comment 3:

**Cost Containment
Measures**

Oversight requested staff and management of the Division of Workers' Compensation (DWC) and the Office of the Attorney General (AGO) to suggest potential changes in the Second Injury Fund program (SIF) which would contain or reduce program costs. Each of these agencies is strongly committed to proper administration of the program as enacted by the General Assembly, and the following items were discussed as potential changes that could reduce program cost or reduce the rate of increase in program cost. These changes could also potentially enhance the SIF program savings that have resulted from previous legislative changes to the Workers' Compensation program, such as SB 1 and 130, 2005.

A. Independent Medical Evaluation

We understand that current law does not permit the AGO and DWC to require a claimant to submit to an independent medical evaluation. Rather, medical examinations by providers chosen by the claimant and/or the employer are currently used to document the nature and extent of the injury and the extent of the claimant's disability. We were told that in some instances, a set of facts agreed to between the employer, the insurer, and the claimant could be used to divert the bulk of the cost of an employee's disability to the SIF.

Officials from the AGO and DWC told us that the ability to require an independent medical evaluation for a claimant would allow a better assessment of the claimant's eligibility for benefits and a better evaluation of the claimant's disability. An independent evaluation also would reduce the opportunity for workers, employers, and insurers to create a claim against the Second Injury Fund without review by the state.

B. Restrictions on Previous Disability

The current law makes an employee eligible for Second Injury Fund benefits if they have a previous disability resulting from an injury "or otherwise". This factor makes persons with disabilities due to accidents away from the workplace, age, disease, genetic conditions, or even lifestyle choices eligible for benefits. If the worker's current injury meets a minimal threshold, the nature of the previous condition does not matter.

The federal Social Security Administration (SSA) provides benefits for disabled persons, and most SIF claimants are also eligible for SSA benefits. As discussed in the section on Lump Sum Payments, there is a form of integration of SIF and SSA benefits for certain classes of claimants. Restricting eligibility requirements for SIF benefits would make Social Security benefits the primary income source for more disabled workers, and reduce SIF program costs.

C. Lifetime Payment of First and Second Job Wages

The current procedure for calculating SIF benefits includes the amount of first and second job wages, and the assumption is made that wages from the first and second job would continue through the lifetime of the claimant rather than to the claimant's expected retirement. We believe that the lifetime second job income benefit unrealistically inflates the benefit amount for a retired claimant.

As further discussed in the section on Lump Sum Payments, the lump sum payments must be determined in exchange for the claimant's expected lifetime benefits. It would appear that the maximum amount of prospective benefits should be calculated, but we believe the actual benefit for claimants who do not elect a lump sum payment should be based on a more realistic set of assumptions.

D. Second Injury Threshold

Current law requires that a claimant must have a minimum of fifteen percent permanent partial disability, according to the medical standards that are used in determining such compensation. We were told that claimants appeared to have used medical practitioners with experience in evaluating disabilities so that the claimant's injuries would meet or exceed this level of disability.

We discussed the possibility of raising this minimum disability standard to reduce the number of SIF cases with DWC management. We understand that such a change could reduce future claims on the SIF, but the effect of the change would be implemented over several years due to the time required to resolve a claim. Further, we were advised that some claims would be re-evaluated by the medical practitioners to meet the new threshold.

Oversight recommends the Division of Workers' Compensation and the Office of the Attorney General advise the General Assembly regarding potential changes in the Second Injury Fund program which will reduce future expenditures while maintaining benefits to those who are not eligible for benefits from other programs.

Comment 4:

External Factors

The Second Injury Fund is uniquely challenged by a set of external factors that impact revenues and expenditures and are not under the control of the Office of the Attorney General or the Division of Workers' Compensation (DWC).

- A. The first is a trend of declining applications for benefits. As shown in Chart 4, the number of new claims filed in 2006 was down significantly from 2005. Information for 2007 is not available but DWC staff indicated that the trend has continued. A reduction in new claims filed would indicate a potential future reduction in claims settled and payments made from the fund and thus, reduced future expenditures.
- B. The second is a trend of declining numbers of workplace injuries, reflected in a lower number of new Workers' Compensation (WC) filings. SIF cases are a subset of WC cases, and a declining number of workplace injuries would indicate that the trend of reduced application for SIF benefits would continue. The declining number of injuries could have many causes including better safety practices by employers and the impact of Senate Bill 1 and 130 from 2005 which restricted the qualifications for compensated injuries.

- C. The trend of declining injuries has one negative impact on the SIF. The report of the National Council on Compensation Insurance indicated that reported injuries had declined 10% and suggested that workers' compensation insurance rates could or should be reduced 10%. A reduction in workers' compensation insurance rates would result in a corresponding and proportional reduction in SIF revenues since SIF revenues are limited to a maximum 3% of WC premiums.
- D. Medical inflation (the increased cost of medical care over time not adjusted for technological improvement) has exceeded the general cost of living index the past few years. Recently, it has averaged about three times the cost of living increase. Medical inflation (higher cost per case) coupled with a larger number of medical care cases results in rapidly increasing costs for medical care. See Chart 5.
- E. As previously disclosed in reports by the Office of the State Auditor and PriceWaterhouseCoopers, a January 2007 Missouri Supreme Court decision (Schoemehl) could result in a significant increase in future SIF liabilities for dependents of disability benefit recipients. The amount of additional benefit cost resulting from this decision will depend on the number of claimants and dependents involved, and on the results of future court decisions.

Oversight recommends the AGO and DWC continue to monitor the factors impacting SIF claim and cost levels, and recommend appropriate changes to the General Assembly as needed to maintain the effectiveness of the program.

**Comment 5:
Incomplete Data
Management Systems**

Management of the SIF program has been weakened by the lack of a coordinated approach to record-keeping and data administration.

A. Division of Workers' Compensation

The Division of Workers' Compensation (DWC) operates a database management system in which all injured worker reports are entered. When the worker is determined to qualify for Second Injury Fund (SIF) benefits, the case is coded to indicate that eligibility and the case is processed according to statutes for the SIF until it is resolved.

Oversight found that the DWC system for monitoring and tracking SIF claims did not provide any information as to the disabling condition or conditions which existed prior to the claimant's last injury. Accordingly, it was not possible to analyze the nature or incidence of injuries, illnesses, or conditions which contributed to the employee's disability.

We were told this information was not recorded and tracked in the DWC computer system since state law does not impose any limitations on the nature or type of the previous condition.

We also noted that there was no information as to the claimant's legal residency status or legal eligibility to work in the USA.

DWC officials said this information was not included in the system since legal residency and legal ability to work in the USA are not requirements for benefit eligibility.

In our analysis of DWC data, Oversight noted that several files had data errors and missing information. Further, many of the files we selected for detailed review had missing information on the computer record for that case. Although this missing information was available from paper-based files, the information was not available in the automated system and thus the missing information could not be searched or quantified.

The reported number of claims filed, dismissed and settled could not be reconciled to the reported beginning and ending numbers of open files for any of the years we reviewed.

As previously disclosed in the PriceWaterhouseCoopers Actuarial Report, DWC recorded all files with lump sum payments as Permanent Partial Disability (PPD) claims prior to 2005 even though some of the claims were actually Permanent Total Disability (PTD) claims. Beginning in 2005, all such files were recorded as PTD claims. PWC concluded that the vast majority of claims with lump sum payments were PPD claims. Oversight did not attempt to separately review PPD and PTD claims.

B. Office of the Attorney General

Officials from the Office of the Attorney General (AGO) told us that information for active SIF cases in their system was limited to case scheduling and file management issues such as the timing of information requests and responses. Reports generated from the current tracking system contain little or no detail since the AGO works with paper-based files.

AGO officials stated the current system does not include detailed information as to the number, type, and status of cases filed but not yet resolved, the types of information requested for each case, the status of employer/insurer settlements, and hearing status since this work is all done in a paper-based system. The AGO officials said that a more detailed case management system would likely be costly and would likely require the diversion of attorneys and clerical staff to the file management process.

C. Comparison of AGO and DWC Systems

The AGO and DWC each maintain case file records, but neither has a comprehensive tracking system which would provide the amounts and kinds of accurate detail and summary information that Oversight believes is needed for all SIF cases. The systems capture different information according to the needs of the two organizations. Further, the numbers of cases filed, resolved, and open at each year end were not reconciled between the two systems.

Oversight believes the differences between the two organizations' needs would not be efficiently provided by one integrated system; however, the agencies should ensure their respective systems provide accurate and complete information for SIF files. We believe the organizations must cooperate and share information to provide that assurance.

D. DWC System Upgrade

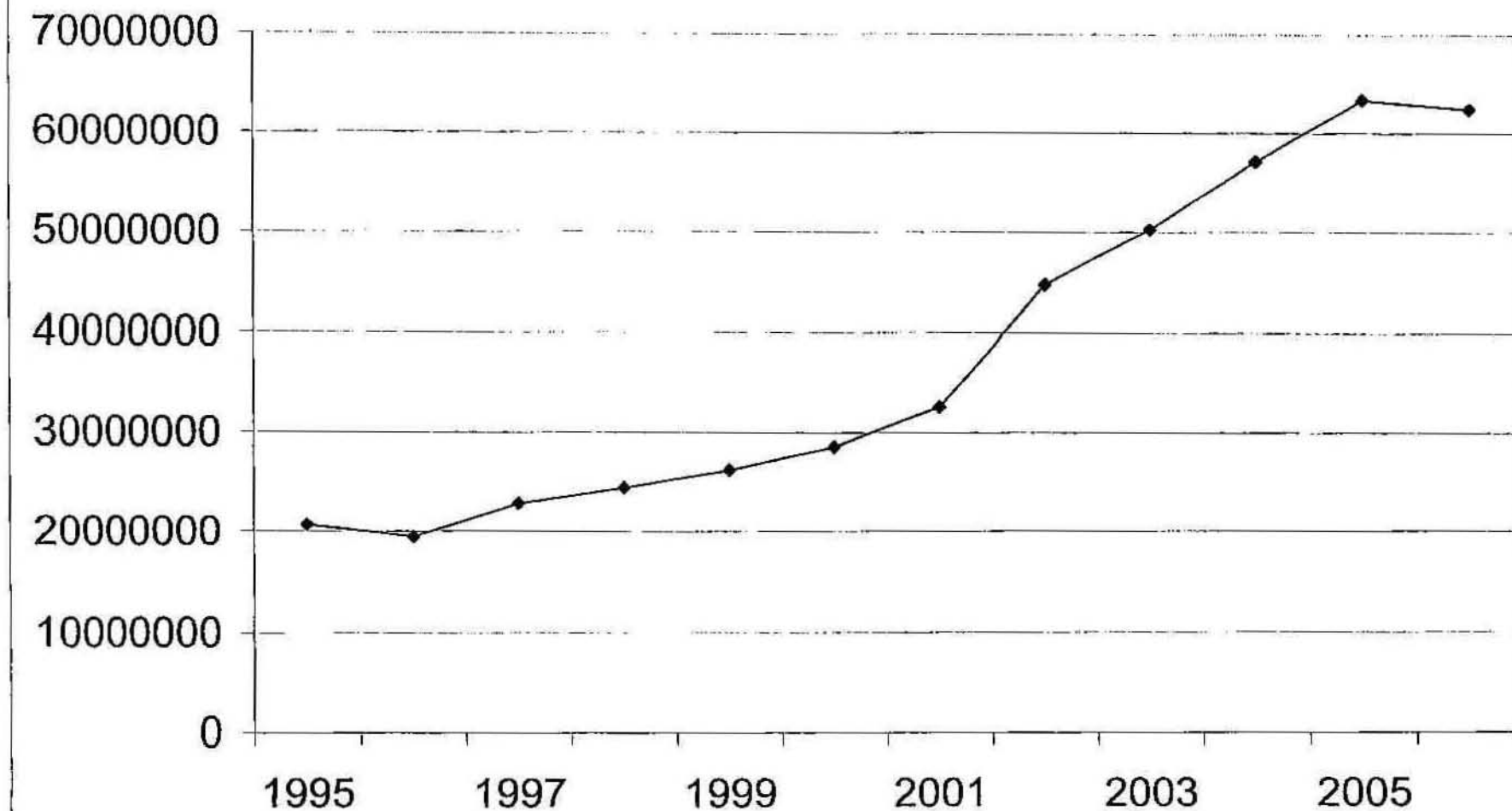
DWC officials told us that an upgraded or new system for the workers' compensation program is being planned, and Oversight suggests that DWC work with the AGO, the STO, and other cooperating agency officials in the planning process. We also suggest the new system be designed to capture additional information such as the worker's previous injury or condition and legal residency and eligibility to work in the USA; information which is not currently required but which could be valuable for analytical purposes or in case of law changes.

The new system should be expandable without requiring a whole system redesign and should provide for appropriately secured access for agencies such as the AGO which have a legitimate need for the information. Differences between the DWC system and other agency systems would likely be minimized if certain functions such as case file opening and closing were done on a coordinated basis between the two agencies.

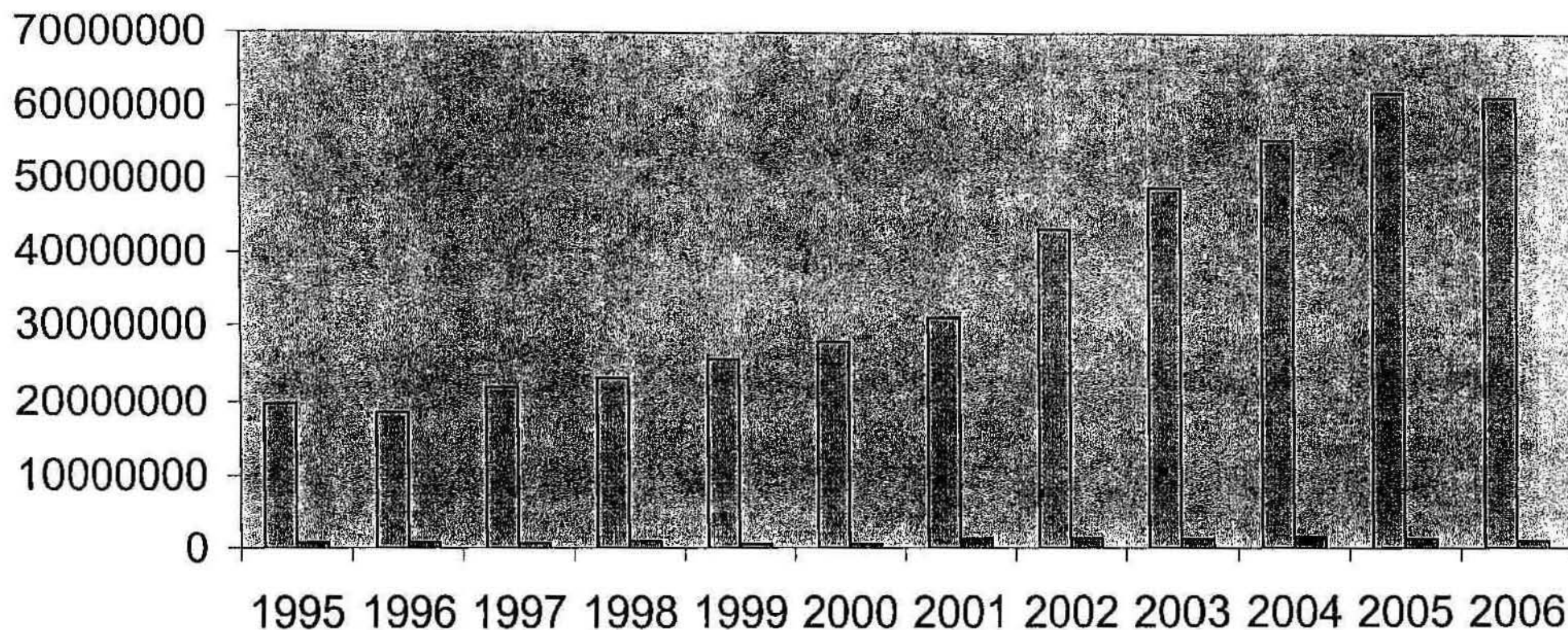
Oversight recommends the DWC, with participation from other stakeholders, continue the design process for a comprehensive case information system. The system should include information needed to fulfill current statutory mandates and other information which would be needed for analytical purposes or law changes, and should provide for secure access by other organizations which need the data.

Appendix 1 - Exhibits

Total Expenditures by Year from Second Injury Fund

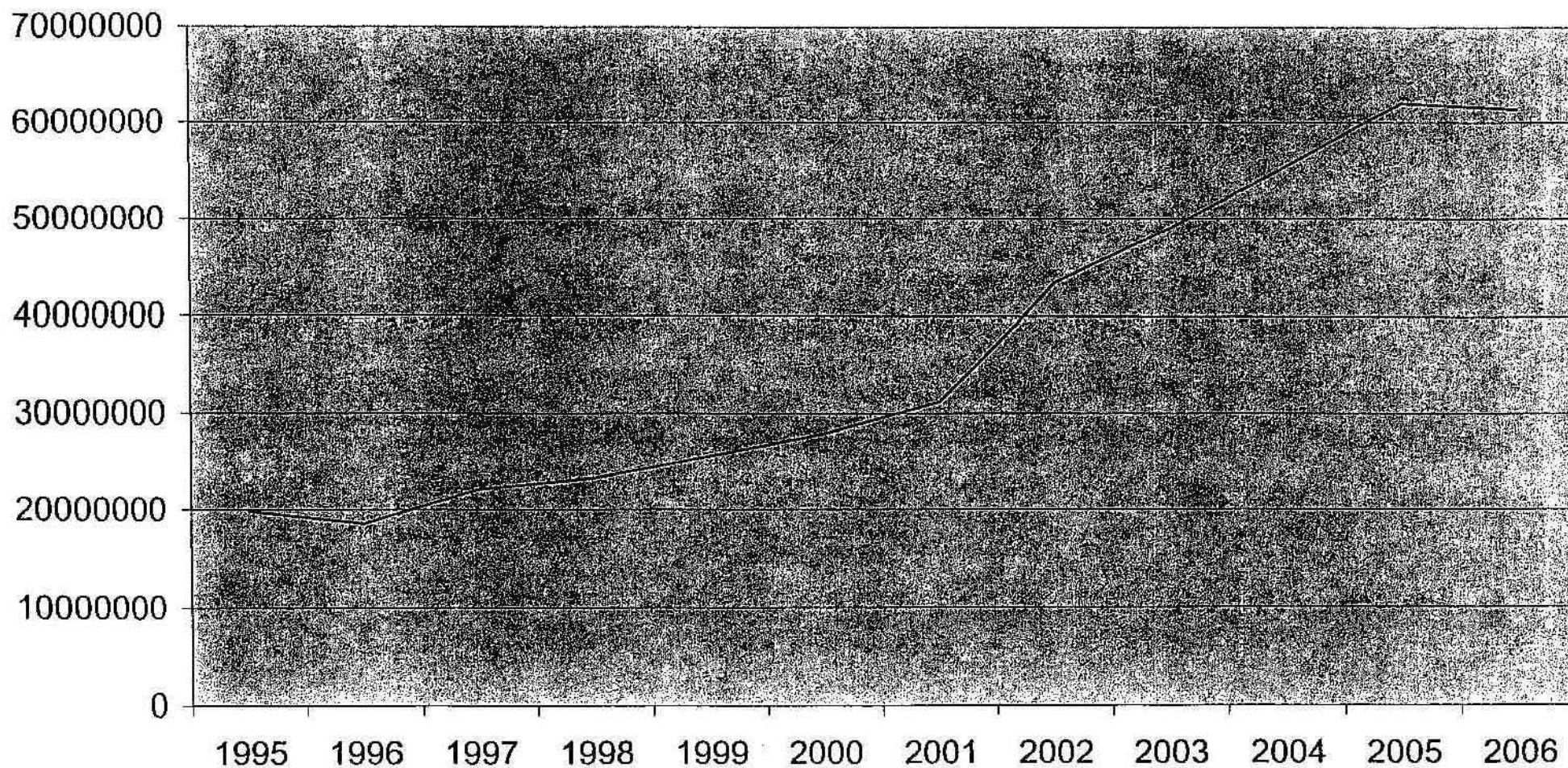


Second Injury Fund Expenditures by Type

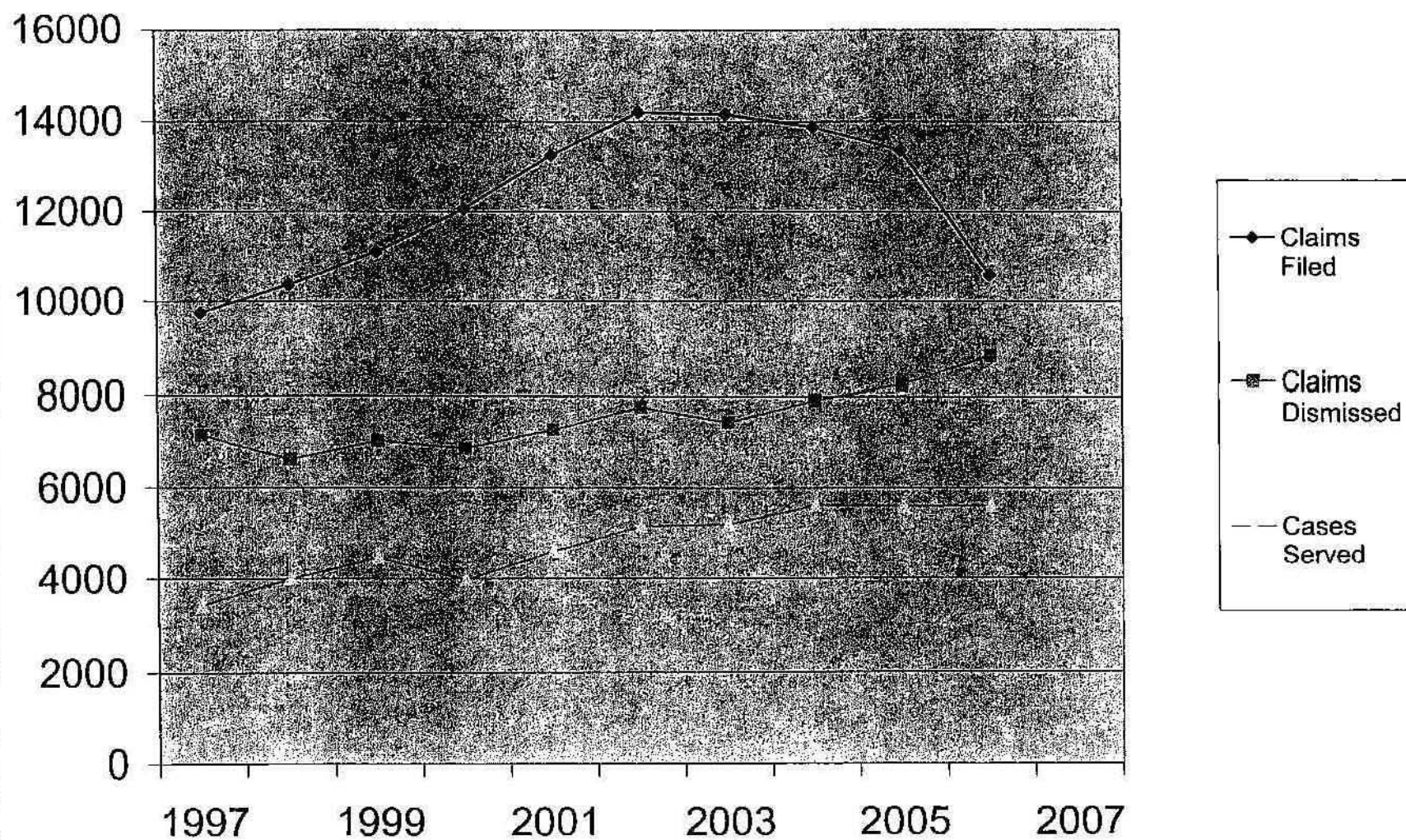


■ Permanent Partial Disability + Permanent Temporary Disability
■ Everything Else

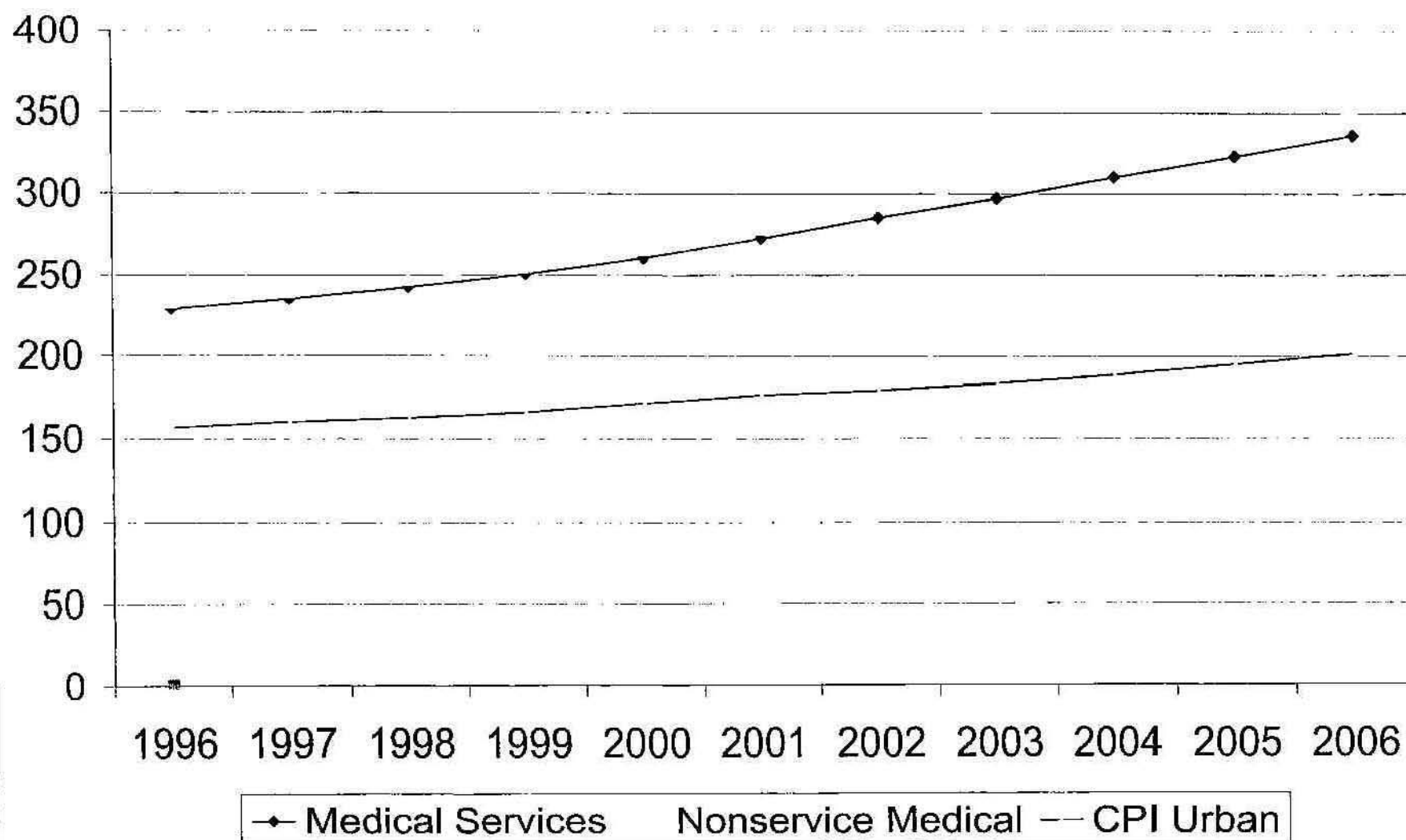
Second Injury Fund
Permanent Partial Disability and
Permanent Total Disability Payments



Second Injury Fund Claim Activity



Medical Cost Increases vs the CPI



Schedule 6

Missouri Second Injury Fund
Total Expenditures by Fiscal Year

| | |
|-----------|---------------|
| 1943-1985 | \$ 24,747,360 |
| 1986 | \$ 7,982,201 |
| 1987 | \$ 11,793,975 |
| 1988 | \$ 12,540,368 |
| 1989 | \$ 8,847,191 |
| 1990 | \$ 19,210,378 |
| 1991 | \$ 32,441,827 |
| 1992 | \$ 21,746,103 |
| 1993 | \$ 7,402,379 |
| 1994 | \$ 18,519,292 |
| 1995 | \$ 21,259,063 |
| 1996 | \$ 21,705,665 |
| 1997 | \$ 22,715,314 |
| 1998 | \$ 25,049,419 |
| 1999 | \$ 26,409,666 |
| 2000 | \$ 29,389,211 |
| 2001 | \$ 39,045,790 |
| 2002 | \$ 47,747,639 |
| 2003 | \$ 53,761,833 |
| 2004 | \$ 62,546,301 |
| 2005 | \$ 60,958,693 |
| 2006 | \$ 63,877,107 |

Second Injury Fund Expenditures
Expenditures by Calendar Year by Agency

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Office of the State Treasurer - Operations | \$32,797 | \$34,641 | \$40,246 | \$42,314 | \$47,381 | \$33,803 | \$41,933 |
| Office of the Attorney General - Operations | \$1,766,609 | \$2,037,930 | \$1,865,073 | \$1,992,285 | \$2,229,653 | \$2,645,019 | \$2,634,803 |
| Office of the Attorney General - Leasing | \$94,518 | \$95,513 | \$114,458 | \$77,821 | \$103,939 | \$102,876 | \$161,504 |
| Office of Administration - Operations | \$411,771 | \$567,131 | \$1,120,418 | \$858,452 | \$1,396,029 | \$1,494,282 | \$1,655,456 |
| Office of Administration - Capital Improvements | \$1,875 | \$2,078 | \$2,272 | \$1,588 | \$5,722 | \$2,566 | \$0 |
| Department of Labor and Industrial Relations | | | | | | | |
| Benefit Payments | \$29,402,137 | \$39,040,907 | \$47,761,439 | \$53,937,636 | \$62,411,992 | \$60,995,159 | \$65,021,789 |
| Attorney charges, refunds, envelopes and postage | \$596,906 | \$428,903 | \$542,139 | \$1,480,805 | \$299,329 | \$111,599 | \$10,700 |
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| Totals | <u>\$33,266,839</u> | <u>\$42,954,464</u> | <u>\$52,428,742</u> | <u>\$58,415,966</u> | <u>\$66,513,722</u> | <u>\$65,385,303</u> | <u>\$69,526,185</u> |

Note 1: The Department of Labor and Industrial Relations compiles this information by calendar year.

Note 2: The operating expenditures of the Workers Compensation Division are paid from the General Revenue Fund.

AGENCY RESPONSE



MATT BLUNT
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

P.O. Box 58

JEFFERSON CITY, MO 65102-0058

www.dolir.mo.gov/wc

E-mail: workerscomp@dolir.mo.gov

OMAR D. DAVIS
DEPARTMENT DIRECTOR

JEFFREY W. BUKER
DIVISION DIRECTOR

Recommendation 1: Oversight has concluded that significant [Second Injury Fund] expenditure reductions would require changes in the law governing the [Second Injury Fund] program, and Oversight recommends that the Department of Labor and Industrial Relations, Division of Workers' Compensation and the Office of Attorney General review potential legislative changes with the General Assembly.

DOLIR Response: DOLIR concurs with the Oversight analysis regarding the increase in the costs per case and increased benefit type payments made from the Second Injury Fund and the assertion that reduction of expenditures from the Fund would require legislative action. During the 2007 legislative session, DOLIR worked closely with the General Assembly by providing technical assistance and statistical information regarding legislative proposals submitted during that session. DOLIR will again offer its technical expertise and pertinent data to assist the General Assembly in making informed decisions regarding any Second Injury Fund legislation that is proposed in the 2008 legislative session.

Recommendation 2: Oversight recommends the Division of Workers' Compensation meet with the Office of Attorney General and the Office of State Treasurer to establish appropriate guidelines for [Second Injury Fund] lump sum settlements and ensure that the program is operated within those guidelines. The meetings and guidelines should be properly documented, and the guidelines should be in written form.

DOLIR Response: Since DOLIR has not had input in the past with the determination of lump sum payment thresholds, DOLIR does not currently have a position on the efficacy of such limits. However, DOLIR strongly concurs with the Oversight assertion that past decisions regarding lump sum payment maximums were made without DWC involvement. There is no conclusive evidence that specific guidelines using sound methodology were used to determine lump sum maximums. DOLIR concurs with the Oversight recommendation that DOLIR be an equal member of a partnership with the Office of Attorney General and the Office of the State Treasurer to establish a regular pattern of meetings and develop specific, measurable and written guidelines to determine lump sum settlement policy and review other issues that have a bearing on the soundness of the Second Injury Fund. DOLIR would like to see such a partnership commenced as soon as possible.

Recommendation 3: Oversight recommends the Division of Workers' Compensation and the Office of the Attorney General advise the General Assembly regarding potential changes in the Second Injury Fund program which will reduce future expenditures while maintaining benefits to those who are not eligible for benefits from other programs.

DOLIR Response: DOLIR realizes that statutory changes are at the sole discretion of the General Assembly. DOLIR concurs that there are multiple elements that effect change in the Second Injury Fund program. Each change by itself may have a variable impact on the expenditure level and solvency of the fund, however, when multiple elements are taken as a whole, those elements will have a positive impact on the performance of the Fund. DOLIR will evaluate the specific statutory proposals recommended by Oversight, as well as other statutory proposals that have already been considered and those that may develop in the future and will provide the necessary information to the General Assembly regarding any proposals that are considered during the 2008 legislative session.

Recommendation 4: Oversight recommends the AGO and DWC continue to monitor the factors impacting SIF claim and cost levels, and recommend appropriate changes to the General Assembly as needed to maintain the effectiveness of the program.

DOLIR Response: DOLIR is aware of external factors that impact the performance and solvency of the Second Injury Fund. DOLIR concurs with the Oversight recommendation and will determine methods to keep the General Assembly timely apprised of

changes that affect the Fund. DOLIR will provide information regarding both the external factors and changes to the Fund as a result of any legislation that may be considered by the General Assembly.

Recommendation 5: Oversight recommends the DWC, with participation from other stakeholders, continue the design process for a comprehensive case information system. The system should include information needed to fulfill current statutory mandates and other information which would be needed for analytical purposes or law changes, and should provide for secure access by other organizations which need the data.

DOLIR Response: DOLIR concurs with the Oversight recommendation. The Division of Workers' Compensation's current business system is unable to support many of the business processes resulting from statutory changes and external business factors and is nearing the end of its life cycle. DOLIR is aware that a new system will produce significant costs savings, improved efficiencies and better use of resources. DOLIR has submitted an RFP to conduct a business analysis of the Division of Workers' Compensation's current system. The result of that analysis will tell DOLIR how to proceed with establishing a system for the Division of Workers' Compensation that will be the most efficient and cost effective. It is the intent of DOLIR to include all stakeholders in developing that system so that it will produce the most accurate data for analytical purposes and for support of policy changes. It is estimated that the business analysis will take twelve to eighteen months. DOLIR does not have a time frame on development of a new system once the business analysis is complete. Also, the Division of Workers' Compensation will, by the end of 2007, begin collecting more detailed information regarding lump sum payments made from the Second Injury Fund. DOLIR will also evaluate the feasibility of capturing additional data in the current business system recommended by legislative oversight.

AGENCY RESPONSE



MATT BLUNT
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

P.O. Box 58

JEFFERSON CITY, MO 65102-0058

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E-mail: workerscomp@dolir.mo.gov

OMAR D. DAVIS
DEPARTMENT DIRECTOR

JEFFREY W. BUKER
DIVISION DIRECTOR

December 3, 2007

Mr. Mickey Wilson, Director
Oversight Division
Committee on Legislative Research
State Capitol
Jefferson City, MO 65101

Dear Mr. Wilson:

Enclosed are the responses from the Department of Labor and Industrial Relations to your draft Second Injury Fund Program Evaluation. I thank you for taking the time to perform this evaluation on a topic which is timely and of significant interest to the citizens of Missouri. I trust your audit staff received the Division's full cooperation and the resources necessary to complete their task.

Please let me know if you have questions or need further clarification of the attached document.

Sincerely,

Jeffrey Buker
Director



MATT BLUNT
GOVERNOR

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

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changes that affect the Fund. DOLIR will provide information regarding both the external factors and changes to the Fund as a result of any legislation that may be considered by the General Assembly.

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OVERSIGHT DIVISION

Second Injury Fund Addendum

Prepared for the Committee on Legislative Research
by the Oversight Division

Mickey Wilson, CPA, Director

Review Team: Steve Shiery, CPA, Team Leader, Jeani Hancock



COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

September 10, 2008

Members of the General Assembly:

The Joint Committee on Legislative Research adopted a resolution in May 2007, directing the Oversight Division to perform a program evaluation of the Department of Labor and Industrial Relations, Second Injury Fund to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation. The program evaluation report was issued in January 2008 after its release was approved by the Joint Committee on Legislative Research.

Since the release of that report, various legislative committees have requested and received information and testimony from state agencies involved with the program. There have also been legislative changes and court decisions which would impact the program. Oversight was requested to update our evaluation of the program, review the legislative history of funding provisions for the Second Injury Fund, and consider whether changes to our report would be indicated as a result of this updated information. Based on our review of the information provided at the hearings and the additional review we have performed, Oversight does not believe the decision to increase the maximum lump sum payment amount was adequately evaluated by the Office of the State Treasurer and the Office of the Attorney General before its adoption.

Oversight analyzed the statutory provisions for funding the Second Injury Fund from 1980 to the present, and our comments on those provisions are presented on page 2. Oversight also reviewed the administrative change, made by the Office of the State Treasurer and the Office of the Attorney General in 2001, to the maximum lump sum payment amount. As noted on page 3 we were not provided complete information regarding that change by the Office of the State Treasurer and the Office of the Attorney General. Our comments related to that change are presented on page 4. In addition, Oversight reviewed certain events subsequent to the release of our report, and our comments are presented on page 5. Finally, Oversight has provided updated financial and statistical information for the program.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may request a copy of this update from the Oversight Division by calling (573) 751-4143.

Respectfully,

A handwritten signature in black ink, appearing to read "Mickey Wilson". The signature is fluid and cursive, with the first name "Mickey" and last name "Wilson" clearly distinguishable.

Mickey Wilson, CPA
Director

History of Second Injury Fund Revenue Provisions

The Division of Workers' Compensation

The Missouri General Assembly first approved a workers' compensation law in 1919, although final voter approval was not completed until 1926. The Department of Labor and Industrial Relations - Division of Workers' Compensation (DWC) administers programs to implement the workers' compensation law. DWC operations are funded by a tax on employers' net workers' compensation insurance premiums and on calculated equivalent premiums for self-insured employers.

The Second Injury Fund

The General Assembly added the Second Injury Fund (SIF) program to the Division of Workers' Compensation in 1943 to help disabled workers find employment. The revenue sources for the Second Injury Fund have been changed several times during the program's existence as noted in the following sections.

Premium Tax

Prior to 1987, part of the funding for the Division of Workers' Compensation and the Second Injury Fund was provided on a combined basis by a tax on net deposits or net premiums received for workers' compensation programs in Missouri, at the rate of three percent. The tax due was assessed by the Director of the Division of Insurance and based on insurance premiums, deposits, and assessments reported by insurance carriers and self-insurers. The premium reports, tax assessments, and payments were made on an annual basis until 1983 when a statutory provision for quarterly payments was enacted. An additional one percent premium tax was added for the support of the Second Injury Fund in 1987; however, this provision was repealed in 1988.

Workers' Compensation Tax

Tax revenues were allocated between the Division of Workers' Compensation and Second Injury Fund programs. Eighty percent of the taxes collected was allocated to the Division of Workers' Compensation, and twenty percent was allocated to the Second Injury Fund. In 1986, the allocation of funds to the Second Injury Fund was changed from twenty percent of taxes collected to thirty percent. In 1987, the taxable base was expanded from "net deposits or net premiums" to "net deposits, net premiums or net assessments" and a premium tax of one percent was added for the support of the Second Injury Fund. In 1988, the workers' compensation tax allocation to the Second Injury Fund was eliminated.

Surcharge

Separately, revenue for the Second Injury Fund has been provided by a surcharge on premiums paid for workers' compensation insurance policies and deposits to self-insurance programs. Prior to 1986, this surcharge was limited to one-half of one percent. In 1986 the surcharge limit was increased to one percent, and in 1988 the surcharge limit was increased to three percent of net deposits, net premiums or net assessments. Additional statutory changes were made in 1993 and 2005, but the limit remained at three percent.

Annual Rate Setting Provisions

The director of the Division of Workers' Compensation (DWC) is required to estimate the amount of benefits payable from the Second Injury Fund during the ensuing calendar year and calculate the total amount of surcharge, subject to the statutory limit, to be imposed during the ensuing calendar year on workers' compensation policy holders and self-insurers. This process results in revenue on a "pay-as-you-go" basis. Other examples of programs financed on this basis are the federal Social Security system, and Missouri local government operations.

Oversight recommends the General Assembly determine the proper basis for funding the Second Injury Fund program.

Actuarial Study Requirement

In 1987, the General Assembly enacted a requirement for an actuarial study to determine the solvency of the fund and the appropriate funding level of the fund, and to forecast future expenditures from the fund. The first actuarial study was to be completed by July 1, 1988, and the study was to be repeated every three years. The legislation did not specify a basis for measuring the fund's solvency, nor for determining the appropriate funding level or forecasting expenditures. Further, the statutory provisions for rate setting were not changed to allow or require the DWC to implement any recommendations which might result from an actuarial study. The DWC did not contract with independent professional actuary firms; rather, DWC staff prepared the studies.

Oversight notes that the actuarial study requirement has not been linked to the rate setting requirement. As we noted above, the DWC has been directed to set the premium tax rate based on past and anticipated future revenues subject to a statutory limit. If the General Assembly determines that the funding should be on an actuarially sound basis, a professional actuarial study should be obtained. That actuarial study may result in recommendations and/or guidance to the General Assembly on any statutory changes which may need to be made.

Change in the Maximum Lump Sum Payment and its Impact on the Second Injury Fund

In 2001, the Office of the State Treasurer (STO) and the Office of the Attorney General (AGO) increased the maximum lump sum settlement amount from \$40,000 to \$60,000. Section 287.220.2 RSMO gives the STO, with the advice and consent of the AGO, the authority to enter into compromise settlements with claimants. There do not appear to be any specific statutory limitations on the authority of the STO and the AGO to make such settlements.

Oversight was not provided any specific documentation in support of the decision to increase the maximum settlement amount; however, in response to committee requests, the AGO provided an actuarial report dated June 6, 2001 in support of this decision. The AGO did not provide a request for proposal nor a contract for the actuarial report.

Oversight's review of this administrative change in the Second Injury Fund program was limited since the RFP and contract were not provided; further officials from the AGO did not respond to our requests for additional information during this review. Oversight was not able to determine the terms under which the actuarial study was performed nor whether a subsequent actuarial review, or other form of analysis, was conducted on the impact of the increase in the maximum lump sum settlement amount. Accordingly, Oversight's understanding of the report is limited to the content of that June 6, 2001 report itself.

Oversight assumes that the change in the maximum lump sum payment amount could be a contributing factor, along with other statutory changes in the Workmens' Compensation and Second Injury Fund programs, in the reduction of the Second Injury Fund balance over recent years.

Short Term Impact

The Executive Summary of the report indicated that there would be additional short-term cash payments from the Second Injury Fund as a result of the increased maximum lump sum, and estimated that additional payments due to the change would amount to \$3,520,000 to \$6,000,000. Oversight was not able to determine how the amount of estimated additional payments was calculated. The actuaries concluded that the additional short-term payments "will likely stop, and could possibly reverse, the process of asset accumulation" in the fund.

Long Term Impact

The Executive Summary also included a set of comments by the actuaries as to the long term effect of the increased lump sum settlement limit. First, the actuaries stated they expected the increase to have a "positive impact" on the fund's overall claim costs. Second, the actuaries stated they could not quantify the point at which additional expenditures for lump sum claim settlements would be offset by reduced payments for future benefits. Finally, the actuaries stated that additional future cash disbursements due to the increased settlement limit should be less than the estimated additional expenditures for the first year after the change in the settlement limit.

The STO and the AGO apparently increased the maximum lump sum settlement limit based on their belief that the increased short-term expenditures would be more than offset by reduced future expenditures. As we noted above, we did not receive any response from the AGO regarding the actuarial study, and we have not been provided any information regarding the impact of that change. Oversight believes that an actuarial review to evaluate the impact of that change or a comparison of lump sum payments made since the change in the maximum lump sum payment limit with the amount of monthly benefits that would have been paid in the absence of those larger lump sum settlements would allow an objective analysis of the impact of the increased lump sum payment limit on the Second Injury Fund.

In our report on the program evaluation, based on the information available at the time, we had commented that an even higher lump sum payment limit might benefit the program. However, as we have noted above, significantly more analysis of such program changes should be done before such decisions are made and the impact of such changes should be evaluated on an ongoing basis.

Oversight recommends the General Assembly consider requesting an independent analysis of the impact of larger lump sum settlement payments on Second Injury Fund expenditures, and take appropriate action.

Subsequent Events

Since the Oversight Division issued its report on the Second Injury Fund in January 2008, there have been some significant events related to the Second Injury Fund.

A. As shown on Schedule 3, the balance in the Second Injury Fund has been reduced to \$19,866,107 at June 30, 2008. Expenditures exceeded revenues by \$3.47 million and \$10.0 million during the fiscal years ended June 30, 2007 and 2008.

B. As shown on Schedule 5, the number of cases filed, the number of cases dismissed, and the number of cases served have declined slightly during the two years prior to June 30, 2008. As shown on Schedule 6, the number of cases open has been reduced from a peak of 33,981 on December 31, 2005, to 27,827 on June 30, 2008.

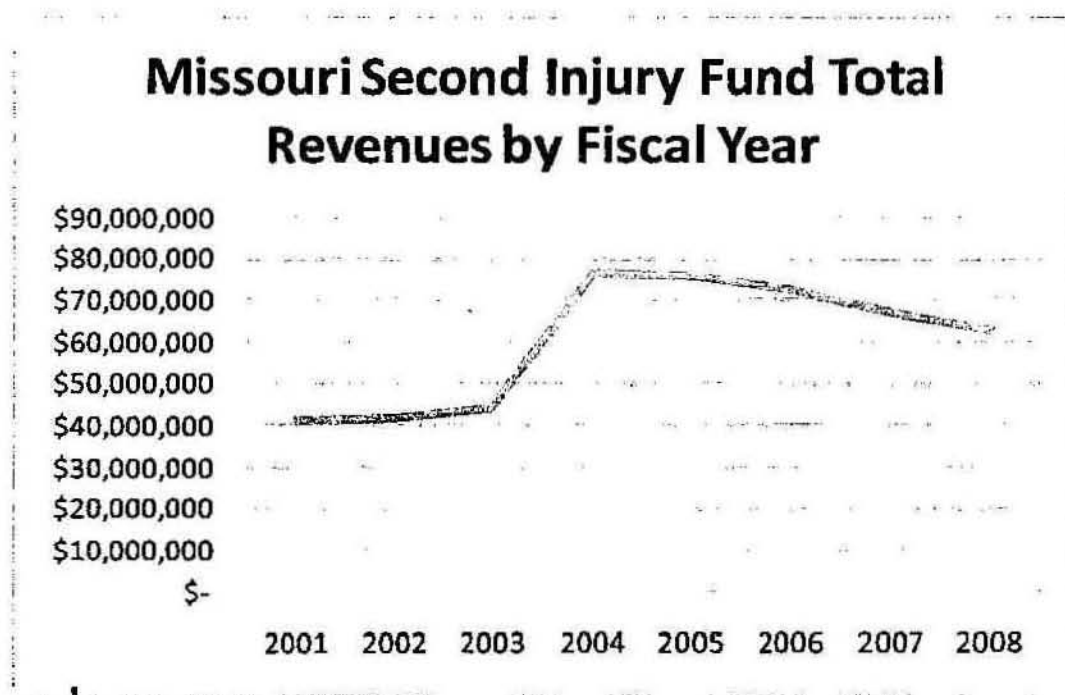
C. Hearings were conducted by the Interim Committee on the Second Injury Fund and by the Oversight Committee. Testimony was requested from the Office of the State Auditor, the Office of the Attorney General, the Office of the State Treasurer, the Department of Labor and Industrial Relations, and the Division of Workers' Compensation. Complete information on written testimony from those hearings was not available to the Oversight Division.

D. The decision by the Missouri Supreme Court in Schoemehl vs Treasurer had increased potential future benefits payable from the fund by making dependents of some claimants eligible for benefits after the death of the original claimant. The General Assembly passed, and the Governor signed HB 1883 in 2008. This proposal indicated the General Assembly's intent to reject and abrogate the Missouri Supreme Court decision.

Oversight recommends the General Assembly continue to monitor the status of the Second Injury Fund and take appropriate action should it become necessary.

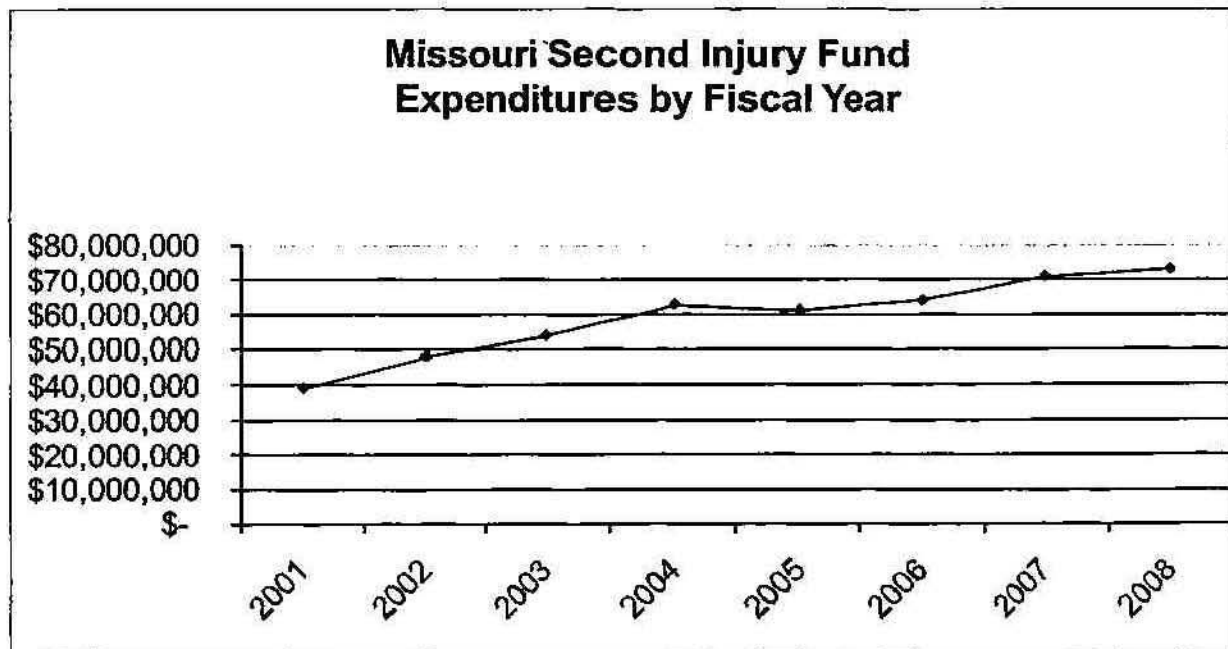
**Missouri Second Injury Fund
Total Revenues by Fiscal Year**

| <u>Fiscal Year</u> | <u>Second Injury Fund Revenues</u> |
|--------------------|--|
| 2001 | \$ 41,445,642 |
| 2002 | \$ 42,148,242 |
| 2003 | \$ 44,121,644 |
| 2004 | \$ 76,331,539 |
| 2005 | \$ 76,024,241 |
| 2006 | \$ 72,505,769 |
| 2007 | \$ 67,024,273 |
| 2008 | \$ 62,945,039 |



**Missouri Second Injury Fund
Expenditures by Fiscal Year**

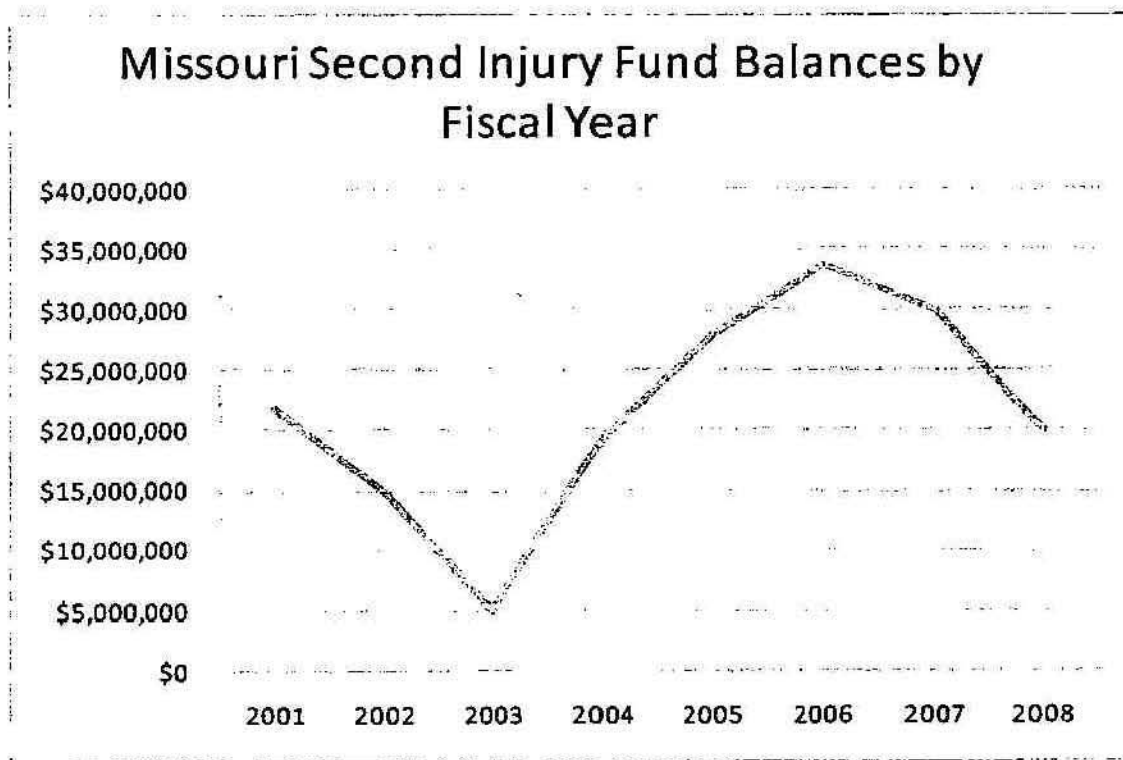
| | |
|-----------|---------------|
| 1943-1985 | \$ 24,747,360 |
| 1986 | \$ 7,982,201 |
| 1987 | \$ 11,793,975 |
| 1988 | \$ 12,540,368 |
| 1989 | \$ 8,847,191 |
| 1990 | \$ 19,210,378 |
| 1991 | \$ 32,441,827 |
| 1992 | \$ 21,746,103 |
| 1993 | \$ 7,402,379 |
| 1994 | \$ 18,519,292 |
| 1995 | \$ 21,259,063 |
| 1996 | \$ 21,705,665 |
| 1997 | \$ 22,715,314 |
| 1998 | \$ 25,049,419 |
| 1999 | \$ 26,409,666 |
| 2000 | \$ 29,389,211 |
| 2001 | \$ 39,045,790 |
| 2002 | \$ 47,747,639 |
| 2003 | \$ 53,761,833 |
| 2004 | \$ 62,546,301 |
| 2005 | \$ 60,958,693 |
| 2006 | \$ 63,877,107 |
| 2007 | \$ 70,788,734 |
| 2008 | \$ 72,927,263 |



Schedule 3

Missouri Second Injury Fund
Fund Balances by Fiscal Year

| <u>Year</u> | <u>Fund Balance</u> |
|-------------|---------------------|
| 2001 | \$21,760,262 |
| 2002 | \$15,020,514 |
| 2003 | \$1,854,698 |
| 2004 | \$19,431,797 |
| 2005 | \$27,862,916 |
| 2006 | \$33,599,056 |
| 2007 | \$29,837,183 |
| 2008 | \$19,866,107 |

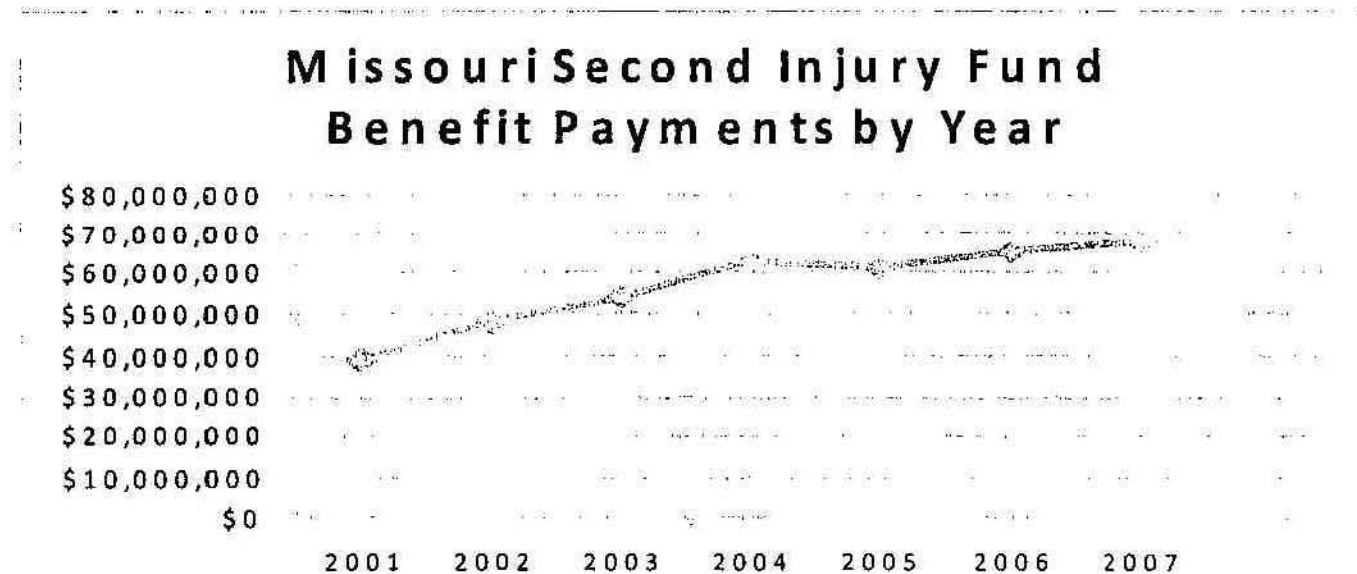


Missouri Second Injury Fund
Expenditures by Calendar Year by Agency

| | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Office of the State Treasurer - Operations | \$34,641 | \$40,246 | \$42,314 | \$47,381 | \$33,803 | \$41,933 | \$43,385 |
| Office of the Attorney General - Operations | \$2,037,930 | \$1,865,073 | \$1,992,285 | \$2,229,653 | \$2,645,019 | \$2,634,803 | \$2,815,808 |
| Office of the Attorney General - Leasing | \$95,513 | \$114,458 | \$77,821 | \$103,939 | \$102,876 | \$161,504 | \$199,490 |
| Office of Administration - Operations | \$567,131 | \$1,120,418 | \$858,452 | \$1,396,029 | \$1,494,282 | \$1,655,456 | \$1,720,232 |
| Office of Administration - Capital Improvements | \$2,078 | \$2,272 | \$1,588 | \$5,722 | \$2,566 | \$0 | |
| Department of Labor and Industrial Relations | | | | | | | |
| Benefit Payments | \$39,040,907 | \$47,761,439 | \$53,937,636 | \$62,411,992 | \$80,995,159 | \$65,021,789 | \$67,805,836 |
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| Totals | \$42,954,464 | \$52,428,742 | \$58,415,966 | \$66,513,722 | \$65,385,303 | \$69,526,185 | \$72,760,756 |

Note 1: The Department of Labor and Industrial Relations compiles this information by calendar year.

Note 2: The operating expenditures of the Workers Compensation Division are paid from the Workers' Compensation Administration Fund.



**Missouri Second Injury Fund
Claims Filed, Dismissed, and Served**

| <u>Year</u> | <u>Claims Filed</u> | <u>Claims Dismissed</u> | <u>Claims Served</u> |
|-------------|-------------------------|-----------------------------|--------------------------|
| 2001 | 13255 | 7273 | 4626 |
| 2002 | 14199 | 7765 | 5177 |
| 2003 | 14157 | 7435 | 5218 |
| 2004 | 13882 | 7912 | 5642 |
| 2005 | 13363 | 8225 | 5616 |
| 2006 | 10591 | 8824 | 5621 |
| 2007 | 10983 | 8799 | 5334 |
| 2008 | 10202 | 8475 | 4930 |

